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Attorney for Defendant Kellytoy (USA), Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARVEL ENTERTAINMENT, INC. f/k/a  
MARVEL ENTERPRISES, INC., a  
Delaware corporation, and MARVEL CHARACTERS,  
INC., a Delaware corporation,

Plaintiffs,

-against-

KELLYTOY (USA), INC.,

Defendant.

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08 CV. 2924 (DC)  
ECF Case

DEFENDANT'S  
INITIAL  
DISCLOSURES

Pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, defendant makes the following Initial Disclosures based upon information presently available to it:

A. Witnesses: The names and last known addresses and telephone numbers of individuals likely to have discoverable information that defendant may use to support its claims are:

1. Jonathan Kelly, Kellytoy (USA), Inc., 5602 Bickett Street, Vernon,

California 90058-3606, Telephone 323-923-1300: defendant's various copyright and trademark licenses from plaintiffs, plaintiffs' approval of the products produced by defendant pursuant to those licenses, and defendant's compliance with the material terms of those license agreements.

2. Representatives of plaintiff, the identities of which are presently unknown to defendant, with knowledge of plaintiffs' grant to defendant of the various license agreements between plaintiffs and defendant, the approvals by plaintiffs of the products produced by defendant pursuant to those license agreements, the conduct of plaintiffs' audits of defendant, and plaintiffs' allegations in their complaint that defendant sold products licensed by plaintiffs after the expiration of defendant's license and outside of the licensed territory and licensed channels of distribution

B. Documents: The documents and tangible things reasonably available to defendant which defendant may use to supports its claims are as follows:

1. License Agreement dated January 9, 2001 between defendant and plaintiffs ("D1003").

2. License Agreement dated September 27, 2001 between defendant and plaintiffs ("D0057").

3. Amendment dated July 2, 2002 to license agreements D1003 and D0057 ("First Amendment").

4. Second Amendment dated January 1, 2003 to license agreements D1002, D0057 and First Amendment.

5. License Agreement dated January 1, 2005 between defendant and

plaintiffs ("D4200").

6. Amendment dated January 1, 2006 to license agreement D4200.

7. Approvals from plaintiffs of the products produced by defendant pursuant to the license agreements

C. Damages: Attorneys fees in an amount defendant cannot calculate as this action is still proceeding.

D. Insurance: Defendant has no relevant insurance agreements to be furnished for inspection and copying.

DATED: NEW YORK, NEW YORK  
AUGUST 29, 2008

THEA J. KERMAN

By: /s/  
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